Contract Carriers Corporation, Bucko Construction Company and Vector Transport Corporation, A Single Integrated Enterprise *and* Teamsters Local Union 142, a/w International Brotherhood of Teamsters, AFL–CIO. Cases 13–CA–39900 and 13–CA–39932

July 29, 2003

DECISION AND ORDER

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On July 2, 2002, Administrative Law Judge C. Richard Miserendino issued the attached decision. The Respondents filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief. The General Counsel filed an answering brief to the Respondents' exceptions. The Respondents filed an answering brief to the cross-exceptions and a reply brief to the General Counsel's answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions, and adopt the recommended Order except as modified and set forth in full below.

We agree with the judge, for the reasons stated in his decision, that the Respondent, Contract Carriers, violated Section 8(a)(5) and (1) of the Act by refusing to provide requested information to the Union and by refusing to meet with the Union's designated representative for processing grievances, Steven Parks. We also agree with the judge that the Respondent, Vector Transport, violated Section 8(a)(5) and (1) by refusing to meet with Steven Parks as the Union's designated representative for grievance processing. However, the judge found, and our dissenting colleague agrees, that the Respondents did not violate the Act by failing and refusing to attend contractual grievance hearings for the purpose of resolving several grievances. For the reasons set forth below, we disagree with the judge and our dissenting colleague and find that the Respondents' refusal to attend these hearings violated Section 8(a)(5) and (1) of the Act.

The Respondents, Contract Carriers and Vector Transport, have collective-bargaining agreements with the Union. Both of those contracts contain grievance/arbitration clauses. Contract Carriers' grievance procedure provides, inter alia, that if a controversy between the parties cannot be settled, then the dispute shall be reduced to writing and referred to a six-member Board. The Board consists of three members selected by signatory employers and three members selected by the Union. The Board shall meet within 14 days of the selection of the members "to hear the evidence and endeavor to arrive at a decision" which is final and binding on the parties. "In the event one party fails to appear without an appropriate notice to one of the co-chairs, the Board shall hear the case and make a decision based upon the evidence presented." In the event of a deadlock, the matter may be referred to final and binding arbitration.

Article 16 of Vector Transport's grievance procedure provides that if satisfactory settlement of a grievance is not achieved at steps 1 or 2, "the Company shall be notified in writing of the date and time to appear before the Executive Board Hearing Committee." At the hearing, the parties present their positions to the Hearing Committee, which issues a "written recommendation" within 14 days of the hearing. If the matter is not resolved before the executive board hearing committee, the Union may pursue the matter to arbitration. This contract, unlike the Contract Carriers contract, is silent regarding the composition of the executive board hearing committee. However, there was testimony that the members of this board were all employees or representatives of the Union.

On September 20, 2001, the Union filed a grievance against Vector Transport regarding the Respondent's underpayment of drivers working on the "Gary Baseball Field" in Gary, Indiana. On November 13, the Union filed a grievance against Contract Carriers alleging that Contract Carriers was underpaying its drivers working on the "Walnut Street" job. On November 14, the Union sought specific information from Contract Carriers in order to prepare for the processing of the grievance. The following day, November 15, the Union filed another grievance alleging that Contract Carriers had changed its method of paying the drivers for "digouts" and sought backpay for them from January 2001 to the present. On this same day, the Union, by letter, filed another information request so that it could prepare for the grievance hearings. Contract Carriers never provided the requested information. The Union scheduled hearings on the grievances and repeatedly requested the Respondents to attend. The Respondents, however, refused to participate in any of those hearings. Additionally, after a meeting was arranged to discuss the grievances, the Respondents' representative, Robert Bucko, refused to meet on December 14, 2001, with the Union's designated representative Steven Parks to discuss the grievances.

The judge dismissed the complaint allegations that the Respondents violated Section 8(a)(5) of the Act by failing to attend the scheduled grievance hearings. The judge found that the Respondents' presence was not necessary for the grievances to be heard by the contractual review boards, and that the Union, although it chose not

to, could have pursued the grievances to arbitration without the Respondents' participation in the hearings. The judge also noted that there was no evidence that the Respondents' refusal to attend the scheduled hearings prejudiced or precluded the Union from processing the grievances. The General Counsel excepts, arguing that the Respondents' refusal to meet with the Union to discuss grievances concerning the terms and conditions of employment violated Section 8(a)(5).

Contrary to the judge and our dissenting colleague, we find merit in the General Counsel's exceptions. The Respondents' failure to attend any of the five scheduled grievance hearings, spanning a 5-month period, occurred in the context of related unfair labor practices clearly intended to frustrate the operation of the grievance process. The Respondents unlawfully refused to supply the Union with information relevant to the grievances, which the Union had requested. It also unlawfully refused to meet and deal with the Union's designated agent regarding the grievances. In these circumstances at least, the Respondents' failure to attend the grievance hearings violated their duty under Section 8(d) of the Act to "meet at reasonable times and confer in good faith with respect to . . . any question arising" under the collective-bargaining agreements.

"It is well settled that an employer is obligated . . . to meet with the employees' bargaining representative to discuss its grievances and to do so in a sincere effort to resolve them." *Hoffman Air & Filtration Systems*, 316 NLRB 353, 356 (1995). A pattern of conduct that frustrates the intended operation of the grievance procedure violates this obligation. See id. at 357 (describing limitations regularly imposed by employer on its representatives in early steps of grievance procedure, as well as employer's rote responses to grievances, designed to forestall agreement and regularly force union into arbitration). See also *Riverside Cement Co.*, 305 NLRB 815, 820 (1991) (refusal to meet with union unless written summary of concerns was first presented violated Sec. 8(a)(5), where refusal was "part of a consistent unlawful strategy" not to deal with union), enfd. mem. 976 F.2d 731 (5th Cir. 1992).

Our dissenting colleague finds that the Respondents' failure to attend the scheduled grievance hearings did not prejudice the Union because the hearings could have proceeded in the absence of the Respondents, and from the standpoint of the grievant and the Union, "a victory is better than a compromise settlement." In so finding, our colleague ignores the importance to constructive dispute resolution, and thus the importance to labor peace and industrial stability, of meetings between representatives of the parties in a collective-bargaining relationship. The Act encourages parties to meet face-to-face and engage in dialogue in order to mutually resolve differences. The point is that mutual communication enhances the prospects for labor and management to work out better solutions to problems facing them and thereby achieve more stable relations. The need for face-to-face communication regarding disputes between the parties is heightened where, as in this case, written requests for information have been ignored by one of the parties. We find that in the circumstances of this case, the Respondents' failure to participate in the agreed-upon grievance procedures and attend the grievance hearings, particularly in light of the refusals to provide information and deal with the Union's designated representative, hindered the constructive resolution of the parties' dispute. Thus, we find that the Respondents' conduct frustrated the collective-bargaining process itself and therefore violated Section 8(a)(5) and (1) of the Act.

Accordingly, we find that the Respondents' refusal to attend the grievance hearings violated Section 8(a)(5) of the Act.

ORDER

A. The National Labor Relations Board orders that the Respondent, Contract Carriers Corporation, Gary, Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to provide the Union with information necessary for, and relevant to, its ability to properly administer its collective-bargaining agreement with the Respondent, including the information requested in the Union's letters, dated November 14 and 15, 2001.

(b) Refusing to bargain with Teamsters Local Union 142, affiliated with the International Brotherhood of Teamsters, AFL–CIO, by refusing to meet and bargain with the Union's designated representatives, including Steven Parks, for the processing of grievances.

(c) Refusing, during the period of November 2001 through April 2002, to participate in scheduled grievance meetings as provided for in the collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish to the Union all of the information requested in the Union's letters, dated November 14 and 15, 2001.

(b) Meet and bargain, on request of the above-named Union, with the Union's designated representatives, including Steven Parks, for the processing of grievances.

(c) On request, participate in scheduled grievance meetings as provided for in the collective-bargaining agreement.

(d) Within 14 days after service by the Region, post at its facility in Gary, Indiana, copies of the attached notice marked "Appendix A."[1] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Within 14 days after service by the Region, duplicate and mail at its own expense a copy of the attached notice marked "Appendix A" to all current and former employees employed by the Respondent covered by the 2000–2003 collective-bargaining agreement with the Union, who were employed by the Respondent at is Walnut Street at any time since November 14, 2001. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

B. The National Labor Relations Board orders that the Respondent, Vector Transport Corporation, Gary Indiana, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with Teamsters Local Union 142, affiliated with the International Brotherhood of Teamsters, AFL–CIO by refusing to meet and bargain with the Union's designated representatives, including Steven Parks, for processing grievances.

(b) Refusing, during the period of November 2001 through April 2002, to participate in scheduled grievance meetings as provided for in the collective-bargaining agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Meet and bargain, on request of the above-named Union, with the Union's designated representatives, including Steven Parks, for the processing of grievances.

(b) On request, participate in scheduled grievance meetings as provided for in the collective-bargaining agreement.

(c) Within 14 days after service by the Region, post at its facility in Gary, Indiana, copies of the attached notice marked "Appendix B."[2] Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Within 14 days after service by the Region, duplicate and mail. At its own expense, a copy of the attached notice "Appendix B" to all current employees and former employees employed by the Respondent at any time since December 4, 2001. The notice shall be mailed to the last known address of each of the employees after being signed by the Respondent's authorized representative.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

CHAIRMAN BATTISTA, dissenting in part.

I agree with my colleagues that the judge properly found that the Respondents unlawfully refused to provide relevant requested information to the Union and unlawfully refused to meet and deal with the Union's designated agent. Contrary to my colleagues, however, I agree with the judge that the Respondents' refusal to attend the scheduled grievance hearings was not unlawful.

The Union has separate contracts with the Respondents Contract Carriers and Vector Transport. Article 6, section 2, of the contract between Contract Carriers and the Union states that if the parties cannot settle a grievance, it is referred to a grievance board, consisting of three employer members and three union members.[1] In the event that one of the parties fails to appear and fails to give appropriate notice of such a nonappearance to one

[1] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[2] See fn. 1.

[1] The grievance board is step two of the grievance procedure. There is no allegation that the Respondent failed to process the grievances through step 1.

of the cochairs, the board shall hear the case and make a decision based upon the evidence presented. According to the Contract Carriers' contract and past practice, the Respondent is not required to attend the grievance hearings before the board. In fact, the Union's business agent, Steven Parks, testified that the practice under the contract with Contract Carriers was that if a party refuses to participate, the grievance board would nevertheless proceed to hear the grievances. The board would make its decision based upon the evidence presented. Of course, in the absence of Employer opposition, there is a significant chance that the Union would prevail. And, even if it did not, the Union could go to the next step, i.e., arbitration.

Although the contract between Vector Transport and the Union states that their representatives would present their positions before the executive board, in fact the only requirement in the contract is that Vector Transport be notified in writing of the date and time of the hearing.[2] This is reinforced by Parks' credited testimony that the same grievance procedure for Contract Carriers could be utilized under the contract with Vector Transport. Consequently, even accepting the Union's testimony, the Respondents did nothing more than avail themselves of their right not to participate in this step of the grievance process. Further, the only consequence of the Respondents' failure to attend would be that the Union's position would be unopposed. In that posture, there is a significant chance that the Union's unopposed position would prevail. This is particularly so inasmuch as the executive board is an all-union body. And, even if the Union did not prevail, there was no evidence that the Union was prejudiced or precluded from taking the grievances to the next step which was arbitration.

My colleagues say that the Respondent's failure to attend the hearings is unlawful because it impedes constructive dispute resolution. I disagree. In the first place, as discussed supra, there is a significant chance that the Union's unopposed position would be accepted by the grievance board/executive board. From a grievant and union standpoint, a victory is better than a compromise settlement. Further, there is a basis for settlement. The grievance board is made up of an equal member of Respondent and union representatives. There is nothing to preclude these representatives from reaching a compromise solution. And, the Union's executive board is free to adopt some middle ground between the Respondent's position and the grievant's position.

Nor do I agree with my colleagues that the Respondent's exercise of its right not to attend the hearings is rendered unlawful because, in their view, the purposes of the Act are better served by "face to face . . . dialogue." Where, as here, the parties through contract and practice have developed procedures for the resolution of contractual grievances they, and not the Board, have determined how to best resolve their labor disputes.

Finally, my colleagues assert that the Respondent's failure to supply information and to meet with the Union's designated agent is further evidence that its refusal to attend the grievance hearings must be unlawful. However, as stated above the Respondent's other unlawful actions would not hinder the Union from obtaining a favorable resolution of the grievances. Further those Respondent actions are themselves separate violations. They cannot be used to render unlawful a privileged refusal to attend the hearings.

Based on all of the above, I agree with the judge's recommendation to dismiss this allegation of the complaint.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT fail and refuse to provide Teamsters Local Union 142, affiliated with the International Brotherhood of Teamsters, AFL–CIO with information necessary for, and relevant to, its ability to properly administer its collective-bargaining agreement with us, including the information requested by the Union in order to process grievances concerning the Walnut Street job, in Hammond, Indiana, and other similar digout jobs.

[2] The executive board is step two of the grievance procedure. There is no allegation that the Respondent failed to process the grievance through step one.

WE WILL NOT refuse to bargain with Teamsters Local Union 142 by refusing to meet and bargain with the Union's designated representatives, including Business Agent Steven Parks, for the processing of grievances.

WE WILL NOT refuse to participate in scheduled grievance meetings as provided for in the collective-bargaining agreement.

WE WILL, on request, promptly furnish to Teamsters Local Union 142 all of the information requested by the Union in its letters, dated November 14 and 15, 2001, concerning hours worked and rates of pay on the Walnut Street job, in Hammond, Indiana, and other similar digout jobs.

WE WILL meet and bargain, on request, with Teamsters Local Union 142 and its designated representatives, including Business Agent Steven Parks for the processing of grievances.

WE WILL, on request, participate in scheduled grievance meetings as provided for in the collective-bargaining agreement.

CONTRACT CARRIERS CORPORATION

APPENDIX B

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist any union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT refuse to bargain with the Teamsters Local Union 142, affiliated with the International Brotherhood of Teamsters, AFL–CIO by refusing to meet and bargain with the Union's designated representatives, including Business Agent Steven Parks, for the processing of grievances.

WE WILL NOT refuse to participate in scheduled grievance meetings as provided for in the collective-bargaining agreement.

WE WILL meet and bargain, on request, with Teamsters Local Union 142, and its designated representatives, including Business Agent Steven Parks for the processing of grievances.

WE WILL, on request, participate in the scheduled grievance meetings as provided for in the collective-bargaining agreement.

VECTOR TRANSPORT CORPORATION

Friedheim Weis, Esq., for the General Counsel.
Steve Johnson, Esq., of Merrillville, Indiana, for the Respondent.

DECISION

STATEMENT OF THE CASE

C. RICHARD MISERENDINO, Administrative Law Judge. This case was tried in Chicago, Illinois, on May 20, 2002. The charge in Case 13–CA–39900 was filed on January 3, 2002,[1] by the Teamster Local Union 142, a/w International Brotherhood of Teamsters, AFL–CIO (the Union), and was amended on February 5, 2002. The charge in Case 13–CA–39932 was filed by the Union on January 18, 2002, and was amended on March 19, 2002. The complaint issued on March 25, 2002, and was amended on April 5. An order consolidating cases and consolidated complaint was issued on May 2, 2002. The consolidated complaint alleges that since November 14, 2001, the Respondent Contract Carriers Corporation (Contract Carriers) has violated Section 8(a)(5) of the Act by unlawfully refusing and failing to provide the names of all union members, along with copies of their daily timesheets and payroll records, who worked the Walnut Street job in 2001, as well as the payroll records of all other drivers who worked on digouts or similar work for the past 2 years. The complaint further alleges that since December 4, 2001, the Respondents Contract Carriers and Vector Tranportation Corporation (Vector Transport) have violated Section 8(a)(5) of the Act by failing and refusing to meet with the Union to process grievances and by failing and refusing to meet and confer with the Union's designated representative, Steven Parks.

The Respondents' timely answer denied the material allegations of the consolidated complaint. The parties have been afforded a full opportunity to appear, present evidence, examine and cross-examine witnesses, and argue orally in lieu of filing briefs.

On the entire record, including my observation of the demeanor of the witnesses, and after oral argument made by counsel for both parties in lieu of filing briefs,[2] I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent Contract Carriers, a corporation, is engaged in the business of providing drivers and trucks to construction companies from its facility in Gary, Indiana, where it annually purchases and receives goods valued in excess of $50,000 di-

[1] All dates are 2001, unless otherwise indicated.
[2] See Sec. 102.42 of the Board's Rules and Regulations.

rectly to and from points outside of the State of Indiana. The Respondent Contract Carriers admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent Bucko Construction, a corporation, is engaged in the business of heavy highway construction from its facility in Gary, Indiana, where it annually purchases and receives goods valued in excess of $50,000 directly to and from points outside of the State of Indiana. The Respondent Contract Carriers admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondent Vector Transport, a corporation, is engaged in the business of providing drivers and trucks to construction companies from its facility in Gary, Indiana, where it annually purchases and receives goods valued in excess of $50,000 directly to and from points outside of the State of Indiana. The Respondent Contract Carriers admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

The Respondents admits, and I find, that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. Facts

1. Background

Contract Carriers is a trucking company that hauls construction materials for construction companies. Approximately 60 percent of its work is performed for Bucko Construction Company, a heavy highway contractor. Contract Carriers is a signatory to a collective-bargaining agreement between Local 142 and the Industrial Contractors and Builders Association of Indiana, Inc. (Association) (GC Exh. 4). The collective-bargaining agreement contains a grievance procedure. Section 1 of article 6, adjustment of disputes, states the Association shall be the sole interpreter of the agreement and that all signatory employers are bound its interpretations of the agreement. Section 1 also provides that any difference or controversy between an employee and an employer shall be addressed at once by the Union and the employer, who shall endeavor to satisfactorily settle the matter. If the matter is not settled, then section 2 states that the controversy shall be reduced to writing within 7 days of the alleged occurrence and referred to a six member Board made up of three signatory employers and three union officials. The Board is authorized to hear and render a final and binding decision on the parties. Notably, section 2 provides that "[i]n the event one party fails to appear without an appropriate notice to one of the co-chairs, the Board shall hear the case and make a decision based upon the evidence presented." In the event of a deadlock, section 3 states that the matter may be referred to final and binding arbitration.

Vector Transport is also a trucking service company that hauls construction materials for construction companies. Approximately 65 percent of its work is performed for Bucko Construction Company. Vector Transport and Local 142 have a collective-bargaining agreement which contains a grievance procedure. (GC Exh. 6.) Step 1 of article 16, Grievance Procedure, allows an aggrieved employee or his union representative to file a written grievance within 15 days of the occurrence or his awareness of the occurrence to the employee's Foreman or immediate Supervisor. If satisfactory settlement is not reached at step 1, the union representative can pursue the matter with upper management, and then onto a hearing before an executive board hearing committee. If the decision of the executive board hearing committee does not resolve the grievance, the Union may pursue the matter to final and binding arbitration.

Robert J. Bucko is the general manger, co-owner, and secretary treasurer of Bucko Construction Company. He is also a co-owner of Contract Carriers. Vector Transport is owned by Robert Bucko's mother, Joan Y. Bucko. Robert Bucko is the general manager of the Company.

2. The Vector Transport grievance

On September 20, 2001, the Union filed grievance 8398 against Vector Transport asserting that Vector had underpaid drivers working on the "Gary Baseball Field," in Gary, Indiana. The remedy sought was payment at 100 percent of the A rate for all hours worked. (GC Exh. 7.)

On November 16, 2001, the Union sent a letter to Robert Bucko advising him that a hearing would be held on December 12, 2001, before the union executive board concerning grievance no. 8398, and requesting that he or an authorized representative of the Company attend the hearing.[3] (GC Exh. 21.)

By letter, dated December 4, 2001, Vector Transport advised the Union that it would not attend the December 12 meeting because it believed the grievance was without merit. Specifically, the letter stated "we feel that the grievance filed has not met the criteria for hearing. The grievance was not filed in a timely manner nor did it abide by the dispute procedures nor was Vector Transport informed of any pre-job conditions that existed on the Gary baseball stadium." (GC Exh. 22; Tr. 122, 129.) Parks testified that the hearing was continued in order to give the Company another opportunity to participate. (Tr. 81.) Although the hearing was subsequently rescheduled several times, the Company repeatedly declined to attend. (GC Exhs. 25, 27, 29, 31.) Parks testified that after the ULP charge was filed, the Union decided to hold the grievance in abeyance pending the outcome of the ULP charge. Thus, a hearing on the grievance 8398 has never been held nor has Bucko ever met with Parks to discuss the grievance. (Tr. 40, 51.)

3. The Contract Carriers' grievances

On November 13, 2001, some union members working on the "Walnut Street" job in Hammond, Indiana, complained to Business Agent Steven Parks that they were not being paid the proper contract rate. (Tr. 72.) Parks phoned Chuck Lawrence, a dispatcher for Contract Carrier, complaining that the Company was paying the drivers at 80 percent of the A rate, rather than at 100 percent of that rate. Unable to resolve the issue, Parks stated that he was going to file a grievance on the matter.

Later that day, the Union filed grievance 8538 against Contract Carriers asserting that Contract Carriers had underpaid the drivers working on the "Walnut Street" job. The remedy sought

[3] The evidence shows that the members of this contractual board are all employees or representatives of the Union. (Tr. 80.)

was to make the drivers whole for wages and benefits. (GC Exh. 13.) By letter, dated November 14, 2001, the Union sought the following information in order to prepare for the processing of grievance 8538:

> 1. Name of all members who worked Walnut St. job in 2001.
> 2. Daily time sheets of all members who worked Walnut St. job for 2001.
> 3. Payroll records of all members who worked Walnut St. job in 2001. [GC Exh. 15.]

On the same day, Parks discussed with Union President Mitch Sawochka the possibility that the Company might be underpaying drivers on other similar jobs. They therefore decided to challenge the Company's pay practice by filing another grievance. According to Parks, he phoned company dispatcher Chuck Lawrence again to advise him that in light of the other pay disputes, the Union was going to file another grievance. The next day, November 15, the Union filed grievance 8545 asserting that the Company had changed the method of paying drivers for "digouts" and seeking as a remedy all backpay from January 1, 2001, to the present. (GC Exh. 18.)

By letter, dated November 15, 2001, the Union filed an information request seeking:

> 1. Copy of all payroll records for the past 2 years for all work for all drivers that were on digouts or similar work. [GC Exh. 20.]

The letter requested that the information be provided by November 25, 2001. The Company did not respond in writing to the request nor did it provide any of the requested information. (Tr. 51.)

On December 12, 2001, a facilitator for contractual board of adjustment advised Contract Carriers that a grievance hearing would be held on December 28, 2001, concerning grievance 8545 and other grievances against the Company that were pending before the adjustment board. (GC Exh. 24.)

In the meantime, Bucko phoned Union Officer Richard Kenny seeking to arrange a meeting with him to discuss the grievances filed against Contract Carriers and Vector Transport. (Tr. 101.) Bucko told Kenny that he did not like dealing with Sawochka because he "had no brains" or Parks because of personal issues that he had with him.[4] Kenny testified that he told Bucko that he would have to deal with the union designated representatives. He nevertheless agreed to meet with Robert Bucko on December 14, in order to discuss grievance no. 8545, as well as other outstanding grievances. (Tr. 102.)

Kenny asked Parks to attend the meeting. (Tr. 44–45.) On December 14, shortly before the meeting was scheduled to begin, Parks received a phone call from Kenny stating that he was running late because of an unexpected problem with another company. He told Parks to start the meeting with Bucko without him. According to Parks, Bucko's secretary told him that Bucko preferred to wait for Kenny. (Tr. 45.) When Kenny phoned again stating that he would not be able to make the meeting, Bucko declined to meet with Parks alone. According to Parks' unrebutted testimony, Bucko would not meet with him to discuss the grievances. (Tr. 41, 132.)

By letter, dated December 21, 2001, Bucko advised the adjustment board facilitator that the Company would not attend the scheduled hearing because "proper protocol was not followed." (GC Exh. 26.) Parks testified that the hearing was continued in order to give the Company the opportunity to participate. Although it was subsequently rescheduled, the Company declined to attend. (GC Exh. 30.) A hearing on grievance 8545 was never held nor did Bucko ever meet with Parks to discuss the grievance. (Tr. 40, 51.)

4. The April/May meetings

In late March-early April 2002, union official Kenny and Robert Bucko met for breakfast. The two agreed not to discuss the specific grievances, but instead spoke generally about the relationship between the Union and the Companies. (Tr. 104.) In the course of the conversation, however, Bucko opined that a grievance is without merit unless there is an identifiable grievant. Kenny replied that the Union often filed grievances on behalf of its members without identify the individual member. (Tr. 104.) Toward the end of the meeting, Bucko reiterated that he did not want to deal with Sawochka and Parks on any grievances. Kenny reiterated that they were the designated union representatives.

On April 23, Bucko wrote to Kenny stating that he would like to settle the grievances and that he would be willing to allow the Union to examine 1 week's worth of drivers' payroll records. (GC Exh. 33.) A meeting was eventually scheduled for May 9, 2002, to discuss all the pending grievances outstanding against Contract Carriers and Vector Transport. (GC Exhs. 35–39.) Basically none of the issues was resolved and none of the requested information was provided. (Tr. 58–59.)

On April 24, Bucko sent a letter to the Union stating "[I]t has come to my attention this afternoon that Teamsters Union Local 142 has communicated to the National Labor Relations Board that we have been unwilling to have a sit down to discuss outstanding issues."[5] (GC Exh. 34.) Bucko pointed out that he had unsuccessfully tried to set up a meeting by telephone the previous day. In his letter, he requested that the Union advise him in writing of the dates and times that they would be available to meet. On May 7, the Union wrote back advising that they could meet on May 9, to discuss all outstanding grievance pertaining to Vector Transport and Contract Carriers and asking that all

[4] Bucko and Parks are contemporaries, who have known each other all their lives. Bucko Construction was founded by Bucko's grandfather in the 1920s. It was taken over and run by Bucko's father, and eventually was taken over by Bucko. Parks' grandfather worked as a truckdriver for the Company when it was founded. Parks' father worked for the Company as a truckdriver, and Parks himself was employed by the Company before he became a union business agent. Over the years, a great deal of hostility and resentment developed between Parks and Bucko that has had nothing to do with union/management relations. (Tr. 92.)

[5] The evidence shows that the Union had deferred processing a ulp charge on February 5, 2002, while attempting to use the grievance procedures to resolve the pending pay disputes. When the Company repeatedly refused to attend the grievance hearings, the Union withdrew the deferral thereby prompting Bucko's letter.

request information be provided at that time. (GC Exh. 38.) Little was resolved at the May 9 meeting and none of the requested information was provided. (Tr. 58–59.)

On May 9, Kenny, Sawochka, Parks, Bucko, and Bucko's secretary met at the union hall. Bucko did not provide any payroll records. Instead, he again asked the Union to provide him with the names of the individuals who had complained about being paid at the wrong rate. The Union refuse to provide him with this information because of concerns that the members would be laid off. (Tr. 115.)

B. Analysis and Findings

1. The unlawful refusal to provide relevant information

Paragraphs X(a)—(c) of the complaint alleges that since November 14, 2001, the Respondent Contract Carriers has failed and refused to provide the Union with specified information concerning the names, hours worked, and payroll records of members who worked on the Walnut Street job in 2001 and other digout jobs.

a. The legal standard

In *A-Plus Roofing, Inc.*, 295 NLRB 967, 970 (1989), the following applicable principles concerning requests for information were stated:

> An employer, pursuant to Section 8(a)(5) of the Act, has an obligation to provide requested information needed by the bargaining representative of its employees for the effective performance of the Respondent's duties and responsibilities. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435–436 (1967). The employer's obligation includes the duty to supply information necessary to administer and police an existing collective-bargaining agreement (Id. at 435–438), and, if the requested information relates to an existing contract provision it thus is "information that is demonstrably necessary to the union if it is to perform its duty to enforce the agreement. . . ." *A.S. Abell Co.*, 230 NLRB 1112, 1113 (1977). Where the requested information concerns employees . . . within the bargaining unit covered by the agreement, this information is presumptively relevant and the employer has the burden of proving lack of relevance. With respect to such information, "the union is not required to show the precise relevance of the requested information to particular bargaining unit issues." *Proctor & Gamble Mfg. Co. v. NLRB*, 603 F.2d 1310 (8th Cir. 1979) at 1315. Where the request is for information concerning employees outside the bargaining unit, the Union must show that the information is relevant. *Brooklyn Union Gas Co.*, 220 NLRB 189 (1975); *Curtiss-Wright Corp.*, 145 NLRB 152 (1963), enfd. 347 F.2d 61, 69 (3d Cir. 1965). In either situation, however, the standard for discovery is the same: "a liberal discovery-type standard." *Loral Electronic Systems*, 253 NLRB 851, 853 (1980); *Acme Industrial*, supra at 432, 437. This information need not necessarily be dispositive of the issue between the parties, it need only have some bearing on it. . . . [footnote omitted.]
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> Once the initial showing of relevance has been made, "the employer has the burden to prove a lack of relevance . . . or to provide adequate reasons as to why he cannot, in good faith, supply such information." *San Diego Newspaper Guild* [*Local 95 v. NLRB*, 548 F.2d 863 (9th Cir. 1977)] at 863, 867.

Finally, in *Island Creek Coal, Co.*, 292 NLRB 480, 487 (1989), the Board stated that in assessing the relevance of the information, it will not pass on the merits of the union's claim that the employer breached the collective-bargaining contract or committed an unfair labor practice; thus, the union need not demonstrate that the contract has been violated in order to obtain the desired information.

b. The General Counsel's evidence

The evidence shows that in November 2001, some union members complained to the Union that they were not being paid the proper contractual rate by Contract Carriers on the Walnut Street job in Hammond, Indiana. The evidence further shows that Union Business Agent Steve Parks brought the matter to the attention of the Company's dispatcher, Chuck Lawrence, who was his contact person at the Company. Lawrence disputed the underpayment claim and therefore the Union filed a grievance under the collective-bargaining agreement. The following day, the Union sent the Company a written request for information seeking the names of all members who worked on the Walnut Street job in 2001, their daily timesheets and payroll records. The undisputed evidence shows that the information pertained to bargaining unit members and that it was necessary for the processing of the grievance. (Tr. 59–60.) Thus, I find that the General Counsel has shown that the information is presumptively relevant and therefore the Respondent Contract Carriers has the burden of proving lack of relevance.

The evidence further shows that because the Company disputed that the employees were underpaid, Parks and Union President Mitch Sawochka filed a second grievance on November 15, on behalf of all drivers working on other similar "digout" jobs conducted by the Respondent. On the same day, the Union filed a written request for information seeking "[c]opies of all payroll records for the past 2 years for all work for all drivers that were on digouts or similar work." Again the undisputed evidence shows that the information pertained to bargaining unit members and that it was necessary for the processing of the grievance. Thus, I find that the General Counsel has shown that the information is presumptively relevant and therefore the Respondent Contract Carriers has the burden of proving lack of relevance.

c. The Respondent's defense

It should be noted at the outset that the Respondent never responded in writing to the Union's November 14 or November 15 request for information. Rather, at trial the Respondent attempted to show that the underlying grievances were without merit, that the Company had acted "reasonably" by asking the Union to provide the names of the members who had complained, and that it sought to settle the grievances by paying any member, who was paid at the incorrect rate, at the higher contractual rate. However, as the Board stated in *Island Creek Coal Co.*, supra, 292 NLRB at 487, the issue here is not whether the Union's grievances have merit. Nor is it whether the Respondent acted reasonably in attempting to settle the

grievances. The issue is whether the Respondent has proven that the information is not relevant to the processing of the two grievances or whether it has explained why it could not in good faith supply the information requested. I find that the Respondent has not proven the former and has not explained the latter. Rather, the evidence shows that the information sought is necessary and relevant to support the grievances and to administer and enforce the collective-bargaining agreement.

Accordingly, I find that the Respondent violated Section 8(a)(5) of the Act by failing and refusing to provide the information requested in the Union's letters, dated November 14 and 15, 2001.

2. The refusal to attend the grievance hearings.

Paragraphs X(d) and (e) of the complaint allege that the Respondents Contract Carriers and Vector Transport violated Section 8(a)(5) of the Act by failing and refusing to meet with the Union for the purposes of processing several grievances. Specifically the General Counsel asserts that the Respondents violated the Act by repeatedly refusing and failing to attend the grievance hearings.

It is well settled that grievances concerning the terms and conditions of employment are mandatory subjects of bargaining even in the absence of a collective-bargaining agreement. *Inabon Asphalt, Inc.*, 325 NLRB No. 50 (1998) (not reported in Board volume); *Riverside Cement Co.*, 305 NLRB 815, 820 (1991). The evidence shows that the Union filed separate grievances against Contract Carriers and Vector Transport and that the Respondents responded orally and in writing to the grievances stating their reasons for denying each grievance at the initial steps. When the Union pursued the matter to the next step, i.e., a grievance hearing, the Respondents refused to participate. However, the evidence also shows that the Respondent's presence was not necessary for the grievances to be heard and decided by the contractual review boards. The undisputed evidence shows that the Union could have pursued the grievances to arbitration even without the Respondent. There is no evidence that the Respondents' absence or refusal to participate in the hearings prejudiced or precluded the Union from processing the grievances. Rather, the evidence shows that the Union voluntarily chose to continue the hearing because it sought to resolve the grievances and because the Respondent had not provided the information that the Union needed to pursue the grievances.

Under these circumstances, I find that the Respondents did not violate Section 8(a)(5) of the Act by failing to attend the grievance hearings. *Atwood & Morrill Co.*, 289 NLRB 794, 880 (1988). Accordingly, I shall recommend that the allegations of paragraphs X(d) and (e) of the complaint be dismissed.

3. The unlawful refusal to meet with Union Business Agent Steve Parks

Paragraph X(g) of the complaint alleges that the Respondents violated Section 8(a)(5) of the Act by failing and refusing to meet with Business Agent Steve Parks. The undisputed evidence shows that Bucko refused to meet alone with Parks because of their longstanding personal relationship, which was totally unrelated to labor-management relations dealings. Bucko told union official Kenny that he did not want to deal with Parks (or Sawochka).

It is axiomatic that a Union has the right to select the persons who will represent it members, unless it clearly and unmistakably waives that right. *United Parcel Service*, 330 NLRB 1020, 1022 (2000). See also *Leigh Portland Cement*, 287 NLRB 978, 983–984 (1988). There is no evidence of a waiver here. There is no evidence that Bucko and Parks had a hostile or antagonist past labor relations history, which might have interfered or impeded the effective resolution of the grievances. Rather, Bucko refused to meet with Parks simply because they did not like each other. Accordingly, I find that by refusing to meet and deal with Business Agent Steve Parks concerning the grievances, the Respondents, by and through Bucko, violated Section 8(a)(5) of the Act.

CONCLUSIONS OF LAW

1. The Respondents are employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Since June 1, 2000, based on Section 8(f) of the Act, the Union has been the exclusive collective-bargaining representative of the truck drivers employed by Respondent Contract Carriers Corporation and has had a valid and enforceable collective-bargaining agreement with Respondent.

4. Since June 1, 2001, based on Section 8(f) of the Act, the Union has been the exclusive collective-bargaining representative of the truck drivers employed by Respondent Vector Transport Corporation and has had a valid and enforceable collective-bargaining agreement with Respondent.

5. By failing and refusing to provide the information requested in the Union's letters, dated November 14 and 15, 2001, the Respondent Contract Carriers Corporation has violated Section 8(a)(5) and (1) of the Act.

6. By failing and refusing to meet with union Business Agent Steven Parks as the Union's designated representative for processing grievances, the Respondents Contract Carriers Corporation and Vector Transport Corporation, by their agent, Robert J. Bucko, has violated Section 8(a)(5) of the Act.

7. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

[Recommended Order omitted from publication.]